

AMENDMENTS TO LB176

(Amendments to E and R amendments, ER143)

Introduced by Davis, 43.

1 1. Insert the following new sections:

2 Section 1. Section 54-2601, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 54-2601 Sections 54-2601 to 54-2631 and section 4 of this act shall
5 be known and may be cited as the Competitive Livestock Markets Act.

6 Sec. 4. (1) For purposes of this section:

7 (a) Association means an organization, corporate or otherwise, with
8 or without capital stock, formed for a common purpose;

9 (b) Contract grower means a person or entity to the extent that
10 person or entity enters into a contract grower agreement;

11 (c) Contract grower agreement means an agreement between a packer
12 and a contract grower for purposes of establishing a contract swine
13 operation;

14 (d) Contract input means a commodity, an organic or synthetic
15 substance, a compound, or a service that is used by a contract grower to
16 produce swine under a contract grower agreement; and

17 (e) Prospective contract grower means a person or entity in active
18 contact with a packer with respect to the establishment of a contract
19 grower agreement.

20 (2) Contract growers and prospective contract growers have the
21 following rights:

22 (a) The right to join or to refrain from joining or belonging to an
23 association of contract growers;

24 (b) The right to lawfully provide statements or information,
25 including to the United States Secretary of Agriculture or to a law
26 enforcement agency, regarding alleged improper actions or violations of

1 law by a packer. This right does not include the right to make statements
2 or provide information if such statements or information are determined
3 to be libelous or slanderous; and

4 (c) The right to file, continue, terminate, or enforce a lien under
5 Nebraska law.

6 (3) Packers shall not engage in the following in connection with
7 contract growers or prospective contract growers:

8 (a) Impose less favorable terms and conditions in contract grower
9 agreements on the basis of a contract grower's or prospective contract
10 grower's membership in a contract grower association or activities in
11 such association;

12 (b) Take action to coerce, retaliate, or discriminate against any
13 contract grower or prospective contract grower because that contract
14 grower or prospective contract grower exercises, or attempts to exercise,
15 any right provided in subsection (2) of this section, including:

16 (i) Any such coercive, retaliatory, or discriminatory action in
17 connection with the execution, termination, extension, or renewal of an
18 agricultural contract between the packer and a contract grower;

19 (ii) Any such coercive, retaliatory, or discriminatory action in
20 connection with the execution, termination, extension, or renewal of a
21 contract grower agreement;

22 (iii) Any such coercive, retaliatory, or discriminatory action in
23 connection with the imposition of discriminatory or preferential terms in
24 a contract grower agreement or the interpretation of the terms of a
25 contract grower agreement in a discriminatory or preferential manner;

26 (iv) Any such coercive, retaliatory, or discriminatory action in
27 connection with the imposition of a penalty, including the unreasonable
28 denial of a reward;

29 (v) Any such coercive, retaliatory, or discriminatory action in
30 connection with the altering of the quality, quantity, or delivery times
31 of contract inputs provided to the contract grower by the packer as

1 required in the contract grower agreement, except that delivery times may
2 be changed by mutual agreement due to weather and market conditions; and

3 (vi) Any such coercive, retaliatory, or discriminatory action in
4 connection with the use of the performance of any other contract grower
5 as a basis for the termination, cancellation, or renewal of a contract
6 grower agreement or to negatively affect the contract grower's
7 compensation, except that nothing in this subdivision shall prohibit a
8 packer from using a program which rewards contract growers with monetary
9 bonuses based on superior performance; and

10 (c) Provide false material factual information to contract growers
11 or prospective contract growers regarding the following:

12 (i) Other contract growers with whom the contract grower or
13 prospective contract grower associates;

14 (ii) An association of contract growers;

15 (iii) An agricultural organization with which the contract grower or
16 prospective contract grower is affiliated; or

17 (iv) The contract grower rights provided in subsection (2) of this
18 section.

19 (4) To the extent applicable to the contract grower agreement, a
20 packer shall provide to the contract grower, upon request, the
21 statistical information and data used to determine payment to the
22 contract grower under the contract grower agreement.

23 (5) To the extent applicable to the contract grower agreement, a
24 packer shall allow a contract grower or a contract grower's designated
25 representative, if within the packer's authority, reasonable access to
26 observe, by actual observation at the time of weighing, the weights and
27 measures used to determine the contract grower's compensation under a
28 contract grower agreement.

29 (6) A packer shall not require a contract grower to make capital
30 investments associated with an existing contract grower agreement that
31 are in addition to the investment requirements of the contract grower

1 agreement unless fair and equitable compensation is paid to the contract
2 grower by the packer in a manner the contract grower agrees to in
3 writing, except that the packer can require a contract grower to make
4 necessary capital improvements at the contract grower's expense to meet
5 statutory or regulatory standards and requirements as a condition to
6 continuing the contractual relationship. If the contract grower cannot
7 reasonably pay for or secure third-party financing for such improvements
8 and modifications, the packer shall attempt to negotiate mutually
9 agreeable financing, terms, and conditions for financing by the packer,
10 enhanced compensation to the contract grower by the packer, or other
11 contract modifications with the contract grower for such mandated
12 improvements or modifications. If the contract grower cannot reasonably
13 pay or secure third-party financing for such improvements or
14 modifications and no mutual agreement is reached with the packer
15 regarding financing, compensation, or other contract modifications,
16 either party may declare a force majeure event under the contract grower
17 agreement. Nothing in this subsection shall affect a contract grower's
18 obligation to reasonably maintain its existing facilities or the
19 facilities as they are improved and modified as referenced in this
20 subsection.

21 (7) Contract growers or prospective contract growers may form and
22 operate an association of agricultural product producers pursuant to the
23 Capper-Volstead Act, 7 U.S.C. 291 and 292, and such an association may
24 negotiate with a packer with respect to the terms of contract grower
25 agreements, including, but not limited to, negotiations related to the
26 compensation to be paid pursuant to contract grower agreements. To the
27 extent that contract growers or prospective contract growers organize
28 such an association:

29 (a) A packer shall not retaliate or discriminate against such
30 contract growers or prospective contract growers because they have
31 organized such an association; and

1 (b) A packer shall negotiate in good faith with any such
2 association.

3 (8)(a) A contract grower who suffers damages as a result of a
4 packer's violation of this section or a contract grower agreement may
5 obtain appropriate legal and equitable relief in a suit against the
6 packer.

7 (b) A prospective contract grower who suffers damages as a result of
8 a packer's violation of this section may obtain appropriate legal and
9 equitable relief in a suit against the packer.

10 (c) The laws of the State of Nebraska shall be applicable to any
11 contract grower agreement between a packer and a contract grower located
12 in the State of Nebraska.

13 (d) A packer shall not use binding alternative dispute resolution as
14 a mechanism to resolve any dispute related to, or arising from, this
15 section or a contract grower agreement.

16 (e) If the contract grower or prospective contract grower prevails
17 in such an action against a packer, the contract grower or prospective
18 contract grower shall be entitled to court costs, reasonable attorney's
19 fees, and reasonable litigation expenses.

20 (f) If injunctive relief is sought in such an action, a contract
21 grower or prospective contract grower shall not be required to post a
22 bond.

23 (g) A packer shall not contract to limit the measure of damages
24 available to a contract grower under Nebraska law.

25 (h) Except as otherwise provided in this section, a contract grower
26 or prospective contract grower shall be entitled to damages as provided
27 by Nebraska law and a packer shall be entitled to defenses as provided by
28 Nebraska law.

29 (9) The Attorney General may enforce this section and any of the
30 rights of contract growers and prospective contract growers identified in
31 this section against a packer. The Attorney General shall also be

1 entitled to injunctive relief, if appropriate, in order to redress
2 violations of this section.

3 2. On page 2, line 16, after the period insert "Agreements for such
4 contract swine operations shall be subject to section 4 of this act.".

5 3. Renumber the remaining sections and correct the repealer
6 accordingly.